

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROMAN SALAMACA, BARBARA	:	CIVIL ACTION NO. 1:09-CV-0678
VANDERSLOOT, and THE N.V. BAR	:	
AND GRILL,	:	(Judge Conner)
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
JOSEPH MUSSO, OFFICER	:	
HERNANDEZ, OFFICER STEVEN	:	
BUFFINGTON, and THE CITY OF	:	
YORK,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 16th day of November, 2009, upon consideration of the report (Doc. 15) of the magistrate judge, recommending that defendants' motion (Doc. 6) to dismiss be granted in part and denied in part, and, following an independent review of the record, it appearing that the complaint in the above-captioned matter requests relief under 42 U.S.C. § 1983 for Fourteenth Amendment violations, First Amendment retaliation, an unconstitutional search and seizure, and municipal liability arising pursuant to Monell v. Department of Social Services, 436 U.S. 658 (1978), (see Doc. 1; see also Doc. 15), that the magistrate judge's report recommends dismissal of plaintiffs' Fourteenth Amendment and Monell claims, (see Doc. 15 at 14, 17), as well as those claims based upon events that occurred on or before April 7, 2007, (see id. at 11-12), that neither party has objected to this recommendation, and

that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report and recommendation (Doc. 15) of the magistrate judge is ADOPTED.
2. Defendants’ motion (Doc. 6) to dismiss is GRANTED in part and DENIED in part as follows:
 - a. The motion (Doc. 6) is GRANTED with respect to plaintiffs’ claims arising under the Fourteenth Amendment, plaintiffs’ municipal liability claims, and any claims based upon events preceding April 8, 2007. Plaintiffs may petition for leave to amend in accordance with the order of court (Doc. 18) dated August 21, 2009.
 - b. The motion is DENIED in all other respects.

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit Court of Appeals expects district courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b) advisory committee’s note; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that when parties do not object to a report and recommendation, the court’s review is conducted under the “plain error” standard, pursuant to which “the error must have been ‘clear’ or ‘obvious’ and seriously affect[s] the fairness or integrity of the judicial proceedings”); Cruz v. Chater, 990 F. Supp. 375, 375-78 (M.D. Pa. 1998) (holding that the district court is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review an unobjected-to report for “clear error”).

3. The above-captioned matter is REMANDED to the magistrate judge for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge